

## **7.1 INTRODUCTION**

This chapter assesses the Project's consistency with the New York State Smart Growth Public Infrastructure Policy Act (ECL § 6-0107), which establishes a policy to maximize the social, economic, and environmental benefits from public infrastructure development by minimizing the impacts associated with unnecessary sprawl. State infrastructure agencies (including the New York State Department of Transportation (NYSDOT)) shall not approve, undertake, support, or finance a public infrastructure project, including providing grants, awards, loans or assistance programs unless, to the extent practicable, the project is consistent with the 10 smart growth criteria set forth in ECL § 6-0107.

## **7.2 REGULATORY FRAMEWORK**

The 10 smart growth criteria are as follows:

- 1) To advance projects for the use, maintenance or improvement of existing infrastructure;
- 2) To advance projects located in municipal centers;
- 3) To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan;
- 4) To protect, preserve, and enhance the state's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archaeological resources;
- 5) To foster mixed land uses and compact development; downtown revitalization; brownfield redevelopment; the enhancement of beauty in public spaces; the diversity and affordability of housing in proximity to places of employment, recreation, and commercial development; and the integration of all income and age groups;
- 6) To provide mobility through transportation choices including improved public transportation and reduced automobile dependency;
- 7) To coordinate between state and local government and intermunicipal and regional planning;
- 8) To participate in community based planning and collaboration;
- 9) To ensure predictability in building and land use codes; and
- 10) To promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.

## **7.3 SMART GROWTH IMPACT STATEMENT**

As discussed below, the Project is consistent with seven of the Smart Growth criteria, compliance with two of the criteria was found to be impracticable, and one of the criteria does not apply to the Project.

***Criterion 1: To advance projects for the use, maintenance, or improvement of existing infrastructure***

The purpose of the Project is to address the existing deficiencies at Norfolk Southern's Portageville Bridge by providing a modern rail crossing of the Genesee River, at its current location, that is capable of carrying current industry standard freight rail loads, to the greatest degree possible meeting Federal Railroad Administration (FRA) Class 4 speeds, while reducing ongoing maintenance efforts and cost. The Project is needed for Norfolk Southern to continue to provide safe, reliable and efficient rail operations on the Southern Tier route. The Project would involve constructing a new rail bridge parallel to, and approximately 75 feet south of, the existing bridge along the Southern Tier route.

The purpose and need and objectives established for the Project, which are intended to maintain and improve the existing infrastructure of the Southern Tier rail freight route, are consistent with this Smart Growth criterion. Consequently, the necessary changes to the public infrastructure (road, parking lot, and trails) in Letchworth State Park are also consistent with the criterion.

***Criterion 2: To advance projects located in municipal centers***

"Municipal centers" are defined in the Smart Growth statute as "areas of concentrated and mixed land uses that serve as centers for various activities, including, but not limited to, central business districts, main streets, downtown areas, brownfield opportunity areas, downtown areas of local waterfront revitalization program areas, transit-oriented development, environmental justice areas, and hardship areas," as well as "areas adjacent to municipal centers, which have clearly defined borders, are designated for concentrated development in the future in a municipal or regional comprehensive plan, and exhibit strong land use, transportation, infrastructure and economic connections to a municipal center; and areas designated in a municipal or comprehensive plan, and appropriately zoned in a municipal zoning ordinance, as a future municipal center." The Project site is not within a municipal center nor is it near a municipal center. The Project site is also not planned as a municipal center.

The purpose and need for the Project is to address the deficiencies associated with the existing Portageville Bridge at its current location. Therefore, any solution that addresses the purpose and need for the Project would not be located in a municipal center and it is not practicable to comply with this policy for the Project.

***Criterion 3: To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan***

The Project site is not located within an area designated for concentrated infill development plan, local waterfront revitalization plan, and/or brownfield opportunity area plan. The existing bridge and location proposed for the new bridge are located on privately owned land encompassed by Letchworth State Park, which is not suitable for concentrated infill development or brownfield redevelopment and is not within the designated Coastal Zone. Wyoming County and Livingston County do not have any comprehensive plans that encompass the Project site, immediate area, the nearby hamlet of Portageville, or Letchworth State Park.

The purpose and need for the Project is to address the deficiencies associated with the existing Portageville Bridge at its current location. Therefore, it is impracticable to comply with the criteria to advance projects in developed areas or areas designated for development as the Project site is not located within a developed area and no such plans exist for the Project site.

***Criterion 4: To protect, preserve and enhance the state's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archaeological resources***

The DEIS has considered the Project's potential for social, economic, and environmental impacts. A summary of the findings related to this criterion is provided below.

- **Agricultural Land:** The Project would not adversely affect agricultural land.
- **Forests:** The new railroad right-of-way and bridge would require the clearing of approximately 3 acres of land, of which approximately 1.7 acres are hemlock–northern hardwood forest. This is a small area of a much larger habitat. Moreover, the Project will include a tree planting program in coordination with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) to mitigate for the loss of this forest area.
- **Surface and Groundwater:** If dewatering is required for construction of the new right-of-way, discharge of water would be conducted in accordance with applicable requirements to avoid or minimize effects on groundwater.

The new Portageville Bridge would be constructed over the Genesee River and anchored to the gorge wall. Construction activities would occur outside of the stream bed and banks of the Genesee River. Disturbance to surface soils from the removal of structural elements, excavation and stockpiling of soils, installation of retaining walls, blasting, and removal of railroad ballast may result in erosion and sediment loading into surface waters. Removal of existing bridge piers within the river would require some work within the stream bed or along the banks of the river. Any work in the stream bed or along the banks would be undertaken in accordance with applicable requirements and the terms of any required permits. In addition, to minimize the potential for erosion during construction, soil erosion measures would be implemented as part of a Stormwater Pollution Prevention Plan (SWPPP) during construction.

- **Air Quality:** The Preferred Alternative is predicted to result in benefits to air quality. A new bridge would allow trains to operate at a higher speed at the river crossing, which would allow more efficient operations that would result in localized air quality benefits. Moreover, continued operation of the Southern Tier route at better efficiency is predicted to result in more freight shipment by rail rather than truck, which would result in regional air quality benefits.
- **Recreation and Open Space:** The Preferred Alternative would have temporary but unavoidable adverse impacts to Letchworth State Park during construction, when a segment of Park Road and other park features in the vicinity of the construction site would be closed to the public, and disruption would occur because of the noise and visual impact associated with construction activities. In terms of permanent effects, the Project would include relocating a small segment of Park Road slightly westward of its current location, relocating two trailheads slightly from their current locations, relocating and enlarging a parking lot (Highbridge Parking Area) for use by park visitors, and enlarging and upgrading a park entrance. These changes would result in overall benefits to the park. A small area of parkland would be acquired to implement the Project, but an equivalent area of land would be provided to the park in accordance with the requirements of Section 6(f) of the Land and Water Conservation Fund Act.

The Preferred Alternative would result in adverse impacts to views in the park by removing the existing bridge. At the same time, however, the Preferred Alternative would open up natural views of the river gorge by removing the bridge superstructure from the gorge, which would be a benefit.

Operation of trains at higher speeds across the bridge would result in moderate noise impacts at locations within the park in the immediate vicinity of the bridge.

- **Scenic Areas:** The existing bridge and the new bridge are located over the Genesee River, which is a New York State Scenic River and protected by the Genesee River Protection Act with the same protections afforded to a federal Wild and Scenic Study River. The Preferred Alternative would not adversely affect the free-flowing condition or other natural features of the river.

Removal of the existing bridge would result in the loss of a structure that is a contributing visual element to Letchworth State Park, which is an aesthetic resource of statewide significance. At the same time, however, removal of the bridge would open up more natural views of the gorge and the new bridge structure, would not obstruct views to, interfere with, or reduce the public's enjoyment of, the natural features that compose Letchworth State Park. The bridge's arch structure was chosen specifically to enhance views in the river gorge.

- **Significant Historic and Archaeological Resources:** A field testing program encountered 19th and 20th century archaeological resources as well as pre-contact materials. The archaeological investigation concluded that the Project would have no adverse effect on archaeological resources that may be eligible for the State and National Registers of Historic Places (S/NRHP). In a letter of May 23, 2011, the New York State Historic Preservation Officer (SHPO) concurred that the research potential of the Project site had been exhausted and indicated there were no further archaeological concerns with the Project.

The Preferred Alternative would result in an Adverse Effect on the S/NRHP-listed Letchworth State Park, due to the removal of the Portageville Bridge, which is a contributing element to Letchworth State Park, and the removal and alteration of other contributing elements in the park (including removal and relocation of a parking area, removal and reorientation of a portion of Park Road, and changes to a historic marker, small portions of trails, and small segments of historic fieldstone walls). These impacts would be minimized to the extent practicable and are unavoidable. Measures to mitigate these impacts have been developed and are set forth in a Memorandum of Agreement (MOA) among the Federal Highway Administration (FHWA), NYSDOT, OPRHP, the State Historic Preservation Office (SHPO), Norfolk Southern, and other Consulting Parties established in accordance with Section 106 of the National Historic Preservation Act, as discussed in this DEIS in Chapter 4.4.11.

Overall, the Project has been designed to preserve, protect, and enhance the state's resources, to the extent practicable, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archaeological resources. While the Preferred Alternative would result in adverse impacts to certain resources that are unavoidable, measures to mitigate impacts have been incorporated into the Project to address these impacts.

***Criterion 5: To foster mixed land uses and compact development; downtown revitalization; brownfield redevelopment; the enhancement of beauty in public spaces; the diversity and affordability of housing in proximity to places of employment, recreation, and commercial development; and the integration of all income and age groups***

- **Mixed Land Uses and Compact Development:** As a project that would replace a deteriorating bridge with a new bridge at the same location to allow continued use of the Southern Tier rail freight route, the Project would have no effect on land use and development patterns in the surrounding area. The Preferred Alternative would require the use of 0.8 acres of vacant rural land adjacent to the existing railroad alignment for the new

railroad right-of-way and the use of some parkland for railroad right-of-way, with a similar amount of private land to be conveyed to Letchworth State Park in accordance with the requirements of the Land and Water Conservation Fund Act (see Chapter 6 of this DEIS for more information).

- **Downtown Revitalization:** The Project is not located within a downtown area, and would have no adverse effects on factors that support a vibrant downtown area, including neighborhood character and stability, schools, places of worship, business districts, or the regional and local economy.
- **Brownfield Redevelopment:** There are no brownfield sites in or around the Project location and therefore the Project would have no direct impact on redevelopment of any particular brownfield site. The optimization of the Southern Tier route, however, could enhance the viability of rail-served brownfield sites for redevelopment in industrial or transportation use.
- **Enhancement of Beauty in Public Spaces:** Removal of the existing bridge would adversely affect a contributing visual element to Letchworth State Park, which is an aesthetic resource of statewide significance. At the same time, however, removal of the bridge would open up more natural views of the gorge and the new bridge structure, would not obstruct views to, or interfere with or reduce the public's enjoyment of, the natural features that compose Letchworth State Park.

The proposed new bridge will be designed to respect and enhance the natural beauty of Letchworth State Park. An arch structure is proposed, so that views in the Genesee River gorge would not be blocked, and the steel superstructure would be painted in a color chosen to harmonize with the setting. Areas of the gorge wall that must be excavated for the bridge arch buttress foundations would be treated with colored drape netting designed to minimize its visibility. Park elements that must be reconstructed (a segment of Park Road, a parking lot, and two trailheads) would also be designed to harmonize with the surrounding park, through the use of similar stone walls and other materials that are found throughout the park.

- **Diversity and Affordability of Housing in Proximity to Places of Employment, Recreation, and Commercial Development:** The Project would neither affect nor create any housing, nor would it have an adverse impact to the regional and local economy or specific businesses in proximity to the Project.
- **Integration of All Income and Age Groups:** Based on a review of available census data, the population of the Town of Portage has a higher percentage of people living below the federal poverty level than the county in which it is located (Livingston County), the bi-county region that contains the Project site (Livingston and Wyoming Counties combined), or New York State. The Town of Genesee Falls, however, does not. The Towns of Portage and Genesee Falls both have a population with a higher proportion of school age (under 18) and lower proportion of working age (ages 18 to 64) residents than both the bi-county region and the state. The elderly (age 65 and over) constitute a higher proportion of the population than in the bi-county region, but lower than the state. The Project would not result in any adverse impacts to the population of the surrounding area, nor would it change settlement patterns locally or in the bi-county region.

Overall, the Project is designed to enhance beauty in public spaces and enhance recreation. As a rail freight project, the other aspects of this criterion do not apply to the Project. Therefore, the Project would be consistent with Criterion 5.

***Criterion 6: To provide mobility through transportation choices including improved public transportation and reduced automobile dependency***

The Southern Tier route is a privately operated rail freight route and therefore has no effect on public transportation or private automobile trips. However, the need for the Project is to continue safe, reliable, and efficient rail operations on the Southern Tier route, which serves as an efficient corridor for rail transportation and an alternative to the transportation of goods by truck. Therefore, the Project is consistent with the Smart Growth criteria to provide mobility through transportation choices.

***Criterion 7: To coordinate between state and local government and inter-municipal and regional planning***

Both Norfolk Southern and NYSDOT have conducted public outreach to local government and planning agencies throughout the development and review of the Project. This has included the public outreach conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) and the New York State Environmental Quality Review Act (SEQRA), which has included and will include public meetings and public comment periods at key milestones. It has also included outreach through a Citizens' Advisory Committee formed in 2009, which is intended to provide information about the Project as design and evaluation advances. In addition, Norfolk Southern has conducted extensive outreach to elected officials, other transportation agencies, planning organizations, and partner railroads as part of its development of the Project. These outreach efforts satisfy the criterion related to coordination between state and local government and intermunicipal and regional planning.

***Criterion 8: To participate in community based planning and collaboration***

Both Norfolk Southern and NYSDOT have conducted extensive public outreach to community-based organizations throughout the development and review of the Project. This has included the public outreach conducted in accordance with the requirements of NEPA and SEQRA, which has included and will include public meetings and public comment periods at key milestones. It has also included outreach through a Citizens' Advisory Committee formed in 2009, which provides information about the Project as design and evaluation advances. These outreach efforts satisfy the criterion related to participation in community-based planning and collaboration.

***Criterion 9: To ensure predictability in building and land use codes***

The Towns of Portage and Genesee Falls do not have zoning regulations and neither Norfolk Southern nor NYSDOT have a role in or jurisdiction over the development or enforcement of building codes in the Towns of Portage and Genesee Falls. In addition, pursuant to applicable federal law, federally regulated railroads operating in interstate commerce, including Norfolk Southern, are not subject to local and state laws that might otherwise apply.<sup>1</sup> Therefore, this policy is not relevant to the Project.

***Criterion 10: To promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs***

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<sup>1</sup> In recognition of the importance of rail transportation to interstate commerce, Congress has enacted legislation providing that federally regulated railroads operating in interstate commerce are not subject to otherwise applicable local and state law and regulation. See Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 USC Section 10501 and the Federal Railway Safety Act of 1976 (FRSA), 49 USC Section 20101 *et seq.* In accordance with these and other similar federal laws, certain state and local regulation of railroads is preempted in order to ensure barriers to interstate commerce are not created. This includes local planning, zoning, and similar local and state laws and ordinances. While Norfolk Southern plans to voluntarily comply with such law when possible, there may be instances where compliance with such law and regulation is not compatible with rail operations and needs.

***of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation***

By restoring the Portageville Bridge to a level of functionality commensurate with the remainder of the rail network, the Project promotes the use of rail transportation for goods movement in New York and the Northeast. Rail transportation has been found to be among the most fuel-efficient means of ground transportation available for the movement of goods. As such, the greenhouse gas emissions per ton-mile are substantially less than the equivalent movement by truck. Thus, this Project promotes sustainable goods movement practices.

Upon completion of the Project, the Portageville Bridge would continue to be owned and maintained by Norfolk Southern. The Federal Railroad Administration has adopted regulations for the ongoing inspection and maintenance of railroad bridges by their owners and there would be no ongoing need for public funding to sustain the operation of the bridge.

The Project would, therefore, support the Smart Growth criterion to promote sustainability and ensure the governance is in place to support its implementation.

#### **7.4 SMART GROWTH ATTESTATION**

The Smart Growth Act requires that the chief executive officer (or his designee) attest that the project meets the relevant Smart Growth Criteria, or shall justify non-compliance as impracticable. This attestation will be prepared at the completion of the Project's Final Environmental Impact Statement and in coordination with NYSDOT's SEQRA Findings. NYSDOT's Smart Growth Screening Tool, used to determine compliance with the policies, and the attestation will be available upon request.